1944 File No. Cotton Cloth Trade II/44

Legal Department.

B BRANCH

Subject:— Rules and Notifications under the Bombay Cotton Cloth Trade Regulation Order 1944

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File No. Cotton Cloth Trade II /44

Gen. 194 e.

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Office of the R.L.A.

A few points arise for consideration in connection with the provisions which appear to be intended by the draft order sent by F.C.(Supply) for scrutiny. In pursuance of the discussion I had with Prof.Antia this morning, some points need clearing up.

1. The five classes of dealers mentioned in clause 5 of the draft order will not it appears be exclusive in the sense that a D class deler may according to sub-clause (d) be a broker and it is conceivable that a broker may act as a principal in some transactions and an agent in others; then again a commission agent may be stocking cloth with a view to supplying it to uncountry cliendts on the receipt of orders. Is it intended to divide dealers into five exclusive classes?

2. Is it intended that a person having a license as a dealer of one class should not hold a license as a dealer of any other class? If not it might perhaps be feasible to describe D class dealers merely as agents, as when he acts otherwise than an agent he would be covered by one of the other classes.

3. Is it intended that a dealer of a particular class should sell only to a dealer of the next lower class, as would appear from the provisions of clause 23? Clause 23 as framed it seems would run counter to normal business practice in Bombay as it would prevent as A class dealer from purchasing cloth from another A Class Dealer; so also a B class dealer short of stock would not be able to reprenish his stock from another.....

...er B class dealer; the same remarks will apply to C.Class Dealers and hawkers (H. class dealers).

4. From whom is it intended that a commission agentor a broker should purchase cloth In view of the provisions of clause 23 it seems that he could only purchase from a manufacturer. Is an agent or broker to be prevented from purchasing from a B class dealer or a retailer (C class dealer)

5. It appears that the provisionsof clause 23 might conflict with the proviso to rule 81(2) (f) of the Defence of India Rules which provides that no order made in exercise of the powers conferred by clause (a) of rule 81(2) on a Provincial Government shall have effect so as to prohibit or restrict the export from any place in the Province to any place outside India of articles or things. This would in effect mean that the prohibition of sale by dealers of certain classes to persons other than those belonging to other specified classes shall not apply to exporters, purchasing from dealers. Is it desired to control their purchases? the position of an exporter storing for export may also perhaps need consideration in the light of any order made by the Government of India in that respect . Purchases made by an exporter could not it seems be controlled by an order made by the Government of India.

Two copies of the draft have been retained in this office.

Id/-

A.A.L.E.

U. R. to F.D.(Supply) No.7428, dated the 28th October 1944. EKN.14/7/

Office of the R.L.A.

A fresh draft Order is sent herewith.

2. No provision can be made for the taking of any deposit in connection with the issue of a licence, as the Defence of India Rules do not authorise such action. In this connection, attention is invited to R.L.A's opinion No.3371 of the 9th May 1944, a copy of which is appended for reference.

3. An explanation has been added to clauses 2(b) and 4(a)(iv), to the effect that 'agent' includes a commission agent, but not a broker or dalal.

4. The terms 'commission agent' an 'broker' are not in law mutually exclusive. It is resumed however that the terms 'commission agent' and 'broker' are well understood and mutually exclusive in the trade.

5. The exclusion or brokers from dealers to whom license may issue under the Order, even presuming that it is highly desirable to eliminate them, does not appear to be a very happy may of achieving this object, as it seems that a number of brokers will lose their means of livelihood, and the provisions of section 15 of the Defence of India Act probably be contravened. It would be better to consider the case of each broker individually, and, in cases in which Government thinks it proper, to refuse a licence under the provisions of clause 8 of the Order. No reasons would have to be assigned to the applicant, but a record of the reasons on which the refusal is based must be kept by Government.

6. The forms, I, VII and VIII at pages 121, 123, and 135 and the forms at pages 145A-156 have been scrutinised and as amended are in order. The correction indicated regarding the reproduction of clause 10 of the Order and it's proviso on the back of forms II to V should be carried out.

Sd/- [illegible].N.M.
Remembrancer of Legal Affairs.

EKN .14/7/

[illegible] to F.D.(Supply)No.8795, dt. the 13th December 1944.

Office of the R.L.A.

The accompanying clauses may be submitted for clauses 4 (a)(i),4(a) (ii) and 4(b).

2. The point about brokers is covered by paragraph 5 of R.L.A's U.R.No.8795 to F.D. (Supply), dated 13th December 1944. It is advisable to consider the case of each broker individually. If it is improper in view of the provisions of section 15 of the Defence of India Act to introduce a clause eliminating brokers it would be much less proper to refuse licence to brokers as a class. There would be no provisions in the order authorising such action which would therefore be illegal.

3. The presumption that no provision can be made for taking bonds from applicants for a licence is correct.

4. Licence fees should be commensurate with the labour and cost incidential to the issue of licences, and consequantial supervision and not unreasonable. What would be considered unreasonable in any particular case must depend on the facts of the case.

Sd/- P.N.M.
29/12

Remembrancer of Legal Affairs.

U.R. to F.D.(Supply) No.393,Confl.,dated the 30th December 1944.

EKN.14/7/